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**SUPPLEMENTAL MATERIAL**  
**NOVEMBER 10, 2004**  
**CITY COMMISSION MEETING**

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**SUPPLEMENTAL MATERIAL**

**C7 - Resolutions**

- C7H A Resolution Ratifying A Contract, In The Amount Of \$50,894, To Carlos Alves, For The Installation Of Mosaic Tile Artwork On The 1000 Block Fountain On Lincoln Road.  
(Public Works)  
(Resolution)
- C7I A Resolution Authorizing The City Manager Or His Designee To Submit Grant Applications For The Following Funds: 1) Retroactively For FY 2004/05 Florida Department Of Law Enforcement, Byrne Grant Funds For The City's E-Ticketing Initiative; 2) Retroactively For FY 2004/05 Urban Areas Security Initiative (UASI) Program For Funding For The Joint Completion Of An Urban Areas Security Initiative Program; 3) Miami Dade County Parking Fine Funds For Various ADA Projects Citywide; 4) The Environmental Protection Agency, Office Of Environmental Education For Funding For An Environmental Education Program; While Leveraging Previously Appropriated Grant Funds As Needed; Further Appropriating The Grants If Approved And Accepted By The City And Authorizing The Execution Of All Necessary Documents Related To These Applications.  
(Grants Management)  
(Resolution)
- C7K A Resolution Allocating \$65,000 From Parks Beautification Funds For Middle Beach Landscape Improvements For The Purchase, Supply, Delivery, And Installation Of Florida Royal Palms And Phoenix Canariensis Palms For The La Gorce Island Landscaping Project.  
(Capital Improvement Projects)  
(Resolution)

**R7 - Resolutions**

- R7E A Resolution Authorizing The Mayor And City Clerk To Execute A Lease Agreement With Hazen And Sawyer, PC, For The Lease Of Approximately 2,800 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue (A/K/A 777 - 17th Street), Miami Beach, Florida, For A Twenty-Three (23) Month Term, Commencing On November 1, 2004, And Ending On September 30, 2006; Further Waiving, By 5/7ths Vote, The Competitive Bidding And Appraisal Requirements As Set Forth In Sections 82-36 Through 82-39 Of The Miami Beach City Code, Finding Such Waiver To Be In The Best Interest Of The City.  
(Economic Development)  
(Lease Agreement)

**R7 - Resolutions** (Continued)

- R7H A Resolution Approving A Settlement Of The Lawsuit Styled, Gloria Rosenthal, Trustee Of The Gloria Rosenthal Trust U/A/D 5-19-88, N/K/A Gloria Rosenthal Trust U/A/D 5-14-99 V. City Of Miami Beach Case No. 04-10744 CA 31; Authorizing The Mayor And City Clerk To Execute Any And All Necessary Settlement Documents, Including But Not Limited To The Execution Of A Purchase And Sale Agreement Between The City (Buyer) And The Gloria Rosenthal Trust (Seller) For The Property Located At 1833 Bay Road, Miami Beach, Florida; Further Making The Settlement Subject To And Conditioned Upon Closing Of The Subject Property.

(Economic Development)  
(Resolution)

- R7I A Resolution Adopting The Certificates Of The Results Of The November 2, 2004 Special Election For The City Of Miami Beach, And Declaring Results Thereof.

(City Attorney's Office)  
(Certificate of County Canvassing Board)

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND COMMISSION OF  
THE CITY OF MIAMI BEACH, FLORIDA, RATIFYING A  
CONTRACT, IN THE AMOUNT OF \$50,894, TO CARLOS  
ALVES, FOR THE INSTALLATION OF MOSAIC TILE  
ARTWORK ON THE 1000 BLOCK FOUNTAIN ON  
LINCOLN ROAD.**

**WHEREAS**, during the programming and design of the fountain enhancements for Lincoln Road, the complete demolition and replacement of the existing fountains on the 700 and 1000 blocks of Lincoln Road was required to meet the design criteria and fountain performance features, as outlined in the Lincoln Road Lighting and Fountain Enhancement Project; and

**WHEREAS**, as part of the design review process, the finishes of the fountains must be approved by the Historic Preservation Board to obtain a building permit for the work; and

**WHEREAS**, the Historic Preservation Board required that the finishes of the exterior walls, wall cap, and fountain basin of the 1000 Block fountain must be restored using mosaic tile installed by the original artist, Carlos Alves, to be consistent with the original fountain finishes; and

**WHEREAS**, the Mayor and City Commission, at its May 8, 2002 meeting, adopted Resolution No. 2002-24848, which authorized the Property Management Director to serve as the Certified General Contractor for the Lincoln Road Lighting and Fountain Enhancement Project; and

**WHEREAS**, the Property Management Director exercising the authority granted to him by the City Commission, contracted Carlos Alves for the installation of the mosaic tile to comply with the order of the Historic Preservation Board; and

**WHEREAS**, a contract with Carlos Alves, in the amount of \$50,894, was executed on May 17, 2004; and

**WHEREAS**, as required by Resolution No. 2002-24848, the Administration hereby requests that the Mayor and City Commission ratify the aforestated contract, which is deemed necessary to continue the work on the Project.

Agenda Item C7H  
Date 11-10-04

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA,** that the Mayor and City Commission hereby ratify a contract, in the amount of \$50,894, to Carlos Alves for the installation of mosaic tile artwork on the 1000 Block fountain on Lincoln Road.

**PASSED** and **ADOPTED** this \_\_\_\_\_ of \_\_\_\_\_, 2004.

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR**

M:\\$CMB\PUBLIC WORKS DEPARTMENT\COMMISSION AGENDA ITEMS\NOVEMBER 10, 2004\LINCOLN ROAD TILE\Lincoln Carlos Alves RESO.doc

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

 10-27-04  
City Attorney 

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SUBMIT GRANT APPLICATIONS FOR THE FOLLOWING FUNDS: 1) RETROACTIVELY FOR FY 2004/05 FLORIDA DEPARTMENT OF LAW ENFORCEMENT, BYRNE GRANT FUNDS FOR THE CITY'S E-TICKETING INITIATIVE; 2) RETROACTIVELY FOR FY 2004/05 URBAN AREAS SECURITY INITIATIVE (UASI) PROGRAM FOR FUNDING FOR THE JOINT COMPLETION OF AN URBAN AREAS SECURITY INITIATIVE PROGRAM; 3) MIAMI DADE COUNTY PARKING FINE FUNDS FOR VARIOUS ADA PROJECTS CITYWIDE; 4) THE ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF ENVIRONMENTAL EDUCATION FOR FUNDING FOR AN ENVIRONMENTAL EDUCATION PROGRAM; WHILE LEVERAGING PREVIOUSLY APPROPRIATED GRANT FUNDS AS NEEDED; FURTHER APPROPRIATING THE GRANTS IF APPROVED AND ACCEPTED BY THE CITY AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS RELATED TO THESE APPLICATIONS.

**WHEREAS**, Miami-Dade County was awarded Federal funds through the State of Florida Department of Law Enforcement Office of Criminal Justice from the Federal Drug Control System Improvement Formula Grant Program; and

**WHEREAS**, the purpose of the Byrne grant is to promote the States' efforts to prevent and control crime, violence and drug abuse and to improve criminal justice systems; and

**WHEREAS**, the City's request for funds will be used for the second year of the Byrne Records Improvement Program; and

**WHEREAS**, the grant requires a 25% cash match, which will be leveraged from the Police Department Law Enforcement Trust Fund; and

**WHEREAS**, retroactive approval is requested from the City Commission to submit a grant application in the amount of \$26,247 to the Florida Department of Law Enforcement, BYRNE Grant program, FY 2004-2005 grant funds, leveraging \$8,749 of Police Departmental Law Enforcement Trust Funds as a match; and

Agenda Item C7I  
Date 11-10-04

**WHEREAS**, the State of Florida, Department of Community Affairs and the City of Miami entered into a federally funded Sub Grant Agreement for US Department of Homeland Security UASI funds in September 2003 and Miami-Dade County and the City of Miami entered into a Memorandum of Agreement in May 2004 for the County's participation in the UASI; and

**WHEREAS**, a local Urban Area Workgroup with responsibility for overall planning and direction of the UASI objectives was established, which included a spending plan for the allocation of funds based upon the strategy; and

**WHEREAS**, the City of Miami Beach is included in the spending plan, and as such has been awarded funding in the amount of \$198,820 as cost-reimbursement for expenses incurred in the performance of the Spending Plan; and

**WHEREAS**, the funds will be used for the acquisition of detection and operational equipment including a technical rescue vehicle and CBRNE Detection equipment; and

**WHEREAS**, the Administration requests retroactive approval to apply for and accept funding from the FY 2004 Urban Areas Security Initiative (UASI) program; and

**WHEREAS**, the City of Miami Beach entered into an Interlocal Agreement with Miami-Dade County on April 18, 2001 for the distribution of funds collected for the misuse of specially marked parking spaces for people with disabilities; and

**WHEREAS**, the agreement is based on Section 316.1967, Florida Statutes, and Section 30-447 of the Code of Miami-Dade County, which authorizes the charging of fines for misuse of specially marked parking spaces for people with disabilities; and

**WHEREAS**, the City proposes using the grant funds for Citywide curb ramps, real-time captioning: City Commission meetings and American sign language interpretive services as needed, citywide, advertisements for the County's emergency evacuation program for people with disabilities and City of Miami Beach ADA grievance policy advertisements as well other relevant ADA-related advertisements; and

**WHEREAS**, eligible City projects, if mandated by federal, state, or local law must be matched in at least an equal amount by other funding. Other City projects or programs may be funded up to 100% by disabled permit parking fine monies and the grant will be matched with City funds, as necessary; and

**WHEREAS**, funds are eligible to be used to provide funds to improve accessibility and equal opportunity to qualified physically disabled persons and to provide funds to conduct public awareness programs concerning physically disabled persons; and

**WHEREAS**, the grant was outlined at the Barrier Free Environment Committee meeting of October 25, 2004 and will be further discussed at the November 22, 2004 meeting; and

**WHEREAS**, approval is requested to submit a grant application in the amount of \$58,204.10, to Miami Dade County for Parking Fines Monies to provide funds to improve accessibility and equal opportunity to qualified physically disabled persons and to provide funds for eligible City ADA projects; and

**WHEREAS**, the Environmental Education Program grant provides funding to support environmental education projects that promote environmental stewardship and provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques; and

**WHEREAS**, the program is authorized under Section 6 of the National Environmental Education Act of 1990 (the Act) (Public Law 101-619); and

**WHEREAS**, the City is seeking funds to provide a local environmental education program and grant funds will be spent on the education component, materials and brochures, and partial implementation costs of an environmental project on Miami Beach; and

**WHEREAS**, approval to submit a grant application to the Environmental Protection Agency, Office of Environmental Education for funding for an Environmental Education Program in an amount not to exceed \$80,00; and

**WHEREAS**, the grant requires a 25% match, the City intends to provide and in-kind match for this grant; and

**NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH** that the Mayor and City Commission hereby authorize the City Manager or his designee to submit grant applications for the following funds: 1) retroactively for FY 2004/05 Florida department of law enforcement, Byrne grant funds for the city's e-ticketing initiative; 2) retroactively for FY 2004/05 urban areas security initiative (UASI) program for funding for the joint completion of an urban areas security initiative program; 3) Miami Dade county parking fine funds for various ADA projects citywide; 4) the environmental protection agency, office of environmental education for funding for an environmental education program; while leveraging previously appropriated grant funds as needed; further appropriating the grants if approved and accepted by the city and authorizing the execution of all necessary documents related to these applications.

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004


ATTEST:

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

\_\_\_\_\_  
MAYOR

T:\AGENDA\2004\Nov1004\Consent\grant

  
\_\_\_\_\_  
City Attorney      11/8/04      Date

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ALLOCATING \$65,000 FROM PARKS BEAUTIFICATION FUNDS FOR MIDDLE BEACH LANDSCAPE IMPROVEMENTS FOR THE PURCHASE, SUPPLY, DELIVERY, AND INSTALLATION OF FLORIDA ROYAL PALMS AND PHOENIX CANARIENSIS PALMS FOR THE LA GORCE ISLAND LANDSCAPING PROJECT.**

**WHEREAS**, on May 16, 2001, the Mayor and City Commission appropriated funds from the General Obligation Bond for La Gorce Island enhancements; and

**WHEREAS**, at the same time, \$65,000 from other Middle Beach funds were also allocated internally to supplement these funds; and

**WHEREAS**, Invitation to Bid No. 03-01/02 was issued for the supply, delivery, and installation of Florida Royal Palms and Phoenix Cnariensis Palms; and

**WHEREAS**, the City's Contractor purchased and installed the Palms; and

**WHEREAS**, a balance of \$6,393 remains in the project funds; and

**WHEREAS**, to complete the landscape enhancement efforts of the La Gorce Island, the La Gorce Homeowner's Association (HOA) has requested that the City now make available the \$65,000 in funding for additional improvements; and

**WHEREAS**, in both 1995 and 1996, the City appropriated \$150,000 (for a total of \$300,000) for Middle Beach Landscape Improvements; and

**WHEREAS**, research has confirmed that there is sufficient funding from those appropriations to complete the landscape improvements requested by the HOA; and

**WHEREAS**, subsequent conversations with the HOA resulted in the HOA requesting additional 45 foot Florida Royal Palms and 10 foot Phoenix Canariensis Palms to finish the Right-of-Way landscaping; and

**WHEREAS**, If the appropriation is approved by the City Commission, a meeting will be set up between the City and HOA to discuss the quantities of Palms that can be installed with these funds, including the earlier project balance of \$6,393 which provides a total of \$71,393 to fund the project; and

**WHEREAS**, because the original appropriations were for general landscape improvements to the Middle Beach area, not specifically for the LaGorce Neighborhood,

**Agenda Item** C7K  
**Date** 11-10-04

the Administration is recommending the formal allocation of \$65,000 from Parks Beautification Funds for the purchase, delivery, and installation of additional palms to improve the existing landscaping and to continue with the enhancement efforts of the La Gorce Island.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** allocate \$65,000 from Parks Beautification Funds for Middle Beach landscape improvements for the purchase, supply, delivery, and installation of Florida Royal Palms and Phoenix Canariensis palms for the La Gorce Island landscaping project.

**PASSED and ADOPTED** this \_\_\_\_\_ day of November, 2004.

ATTEST:

\_\_\_\_\_  
CITY CLERK


\_\_\_\_\_  
MAYOR

~~APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION~~

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
Date

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Date

# LEASE AGREEMENT

THIS LEASE AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **HAZEN AND SAWYER, P.C.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

Landlord, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the Landlord, those certain premises hereinafter referred to as the "Demised Premises", located in the City of Miami Beach, 1701 Meridian Avenue (a.k.a. 777-17<sup>th</sup> Street or the Property), Penthouse Suite, Miami Beach, Florida 33139, and more fully described as follows:

**1701 Meridian Avenue, Penthouse Suite:** encompassing approximately two thousand eight hundred **(2,800)** square feet on the fifth floor (total leasable space). Such space on the fifth floor is also more fully specified in "Exhibit A", which is hereby made a part of this Lease Agreement.

2. Term.

2.1. The Tenant shall be entitled to have and to hold the Demised Premises for an initial term of approximately **twenty-three (23) months**, commencing on the **15th day of November 2004** (Commencement Date), and ending on the **30th day of September, 2006**.

2.2. Option to Renew:

Provided Tenant is in good standing under this Lease Agreement and Tenant is not in default of any of the terms and conditions hereof, including but not limited to Tenant's obligation for payment of all Rent, pursuant to Section 3 of this Lease Agreement, the Landlord may, in its sole discretion, provide the Tenant, after the conclusion of the initial Term of this Lease Agreement, an opportunity to extend the term of the Lease Agreement to run concurrent with any extension to the term that the City may grant to Hazen and Sawyer pursuant to its City-wide Program Management Services Contract (awarded pursuant to City of Miami Beach Request for Qualifications (RFQ) No. 102-99/00), dated January 31, 2001. Notwithstanding the aforesaid, the full term of the Lease Agreement, including any such extension shall not exceed five (5) years in total (October 31, 2009) from the Commencement Date. Upon termination of the Lease Agreement, as may be extended at Landlord's discretion, Tenant shall surrender the Demised Premises in accordance with Section 34 of this Lease Agreement.

3. Rent.

- 3.1 The Landlord and Tenant have agreed and acknowledge that all Rent, which includes Base Rent and Additional Rent, both as defined herein, due for the initial six (6) month period of the Lease Agreement, said initial period effective November 15, 2004, and ending April 30, 2005, will be abated.

Rent for the Demised Premises shall begin to accrue on May 1, 2005 (the Rent Commencement Date), and shall be based upon a total leasable space of 2,800 square feet and for the first lease year (November 15, 2004 - September 30, 2005) shall total twenty six thousand eight hundred thirty three dollars and thirty three cents **(\$26,833.33)**, payable in monthly installments of five thousand three hundred sixty-six dollars and sixty-seven cents **(\$5,366.67)**, and for the remaining year (October 1, 2005 - September 30, 2006), as increased by 3% in accordance with Section 3.3 below, shall total sixty-six thousand three hundred thirty-two dollars and four cents **(\$66,332.04)** per year, payable in monthly installments of five thousand five hundred twenty-seven dollars and sixty-seven cents **(\$5,527.67)**, as more specifically described below:

3.1.1 Base Rent:

3.1.1.1 Base Rent for the Demised Premises for the first lease year shall total fifteen thousand four hundred forty nine dollars and ninety five cents **(\$15,449.95)**, payable in monthly installments of three thousand eighty nine dollars and ninety nine cents **(\$3,089.99)**.

3.1.1.2 Base Rent for the Demised Premises for all remaining lease years shall total thirty eight thousand one hundred ninety two dollars and twenty eight cents **(\$38,192.28)** per year, payable in monthly installments of three thousand one hundred eighty two dollars and sixty nine cents **(\$3,182.69)**, as increased by 3% annually in accordance with Section 3.3 below.

3.1.1.3 Base Rent shall be due and payable effective as of the Rent Commencement Date, and on the first day of each month thereafter throughout the Term herein.

3.1.2 Additional Rent:

In addition to the monthly Base Rent, as set forth in Section 3.1.1, Tenant shall also pay to Landlord Additional Rent as provided below:

3.1.2.1 Operating Expenses:

For the first lease year Tenant shall pay Landlord one thousand eight hundred forty dollars and twelve cents **(\$1,840.12)** per month, which shall increase to one

and ninety eight cents **(\$272.98)**. Said Property Tax Payment for the remaining year shall be \$281.17 per month, as increased by 3% in accordance with Section 3.3 below.

3.1.2.3 Insurance:

Tenant shall pay to Landlord, for the first lease year, one hundred sixty-three dollars and fifty-eight cents **(\$163.58)** per month, which for the remaining year shall be \$168.49, as increased by 3% in accordance with Section 3.3 below, toward estimated insurance costs incurred by Landlord (Landlord's Insurance) to insure the whole of the building and property at 1701 Meridian Avenue. The preceding insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole cost and expense. A copy of Landlord's certificate of insurance will be provided to Tenant.

3.3 All Rent, including Base Rent and Additional Rent, due pursuant to this Section 3 shall be increased annually, on the anniversary of the Commencement Date of the Lease Agreement, in increments of three (3%) percent per year.

3.4 Sales Tax:

Concurrent with the payment of the monthly installment of Base Rent and Additional Rent provided herein, the Tenant shall also include any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by State, Federal or local law, and now described by Florida Statute 212.031, presently at the rate of seven (7%) percent of the rental payments.

4. Location for Payments.

All Rent or other payments due hereunder shall be paid to the City of Miami Beach at the following address:

City of Miami Beach  
Finance Department  
c/o Revenue Manager  
1700 Convention Center Drive  
Miami Beach, Florida 33139

5. Parking.

5.1 Intentionally Omitted.

5.2 Tenant may request, from the City's Parking Department, the use of parking spaces, if available, at Municipal Parking Garage 2-G, located on 17<sup>th</sup> Street and Meridian Court. City of Miami Beach rates for said spaces are subject to

thousand eight hundred ninety-five dollars and thirty-two cents (**\$1,895.32**) per month for the remaining year, as increased by 3% in accordance with Section 3.3 below , towards "Operating Expenses", which are defined as follows:

"Operating Expenses" shall mean the total cost and expenses incurred by Landlord in operating, repairing, and maintaining the Common Facilities (hereinafter defined) actually used, or the Common Facilities (hereinafter defined) available for use by the Tenant and its employees, agents, servants, customers and invitees, excluding only the items included within the Base Rent amount.

"Common Facilities" shall mean all areas, space, equipment and special services, including without limitation, water service to the building, sewer service to the building, trash removal from the building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the Landlord's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the Landlord for the common or joint use and/or benefit of the occupants of 1701 Meridian Avenue, their employees, agents, servants, customers and other invitees.

3.1.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11. The Property Tax Payment for 2004 is estimated to be three thousand two hundred seventy-five dollars and seventy-six cents (\$3,275.76), which shall be payable by the Tenant in monthly installments of two hundred seventy-two dollars

change, and are, as of the Commencement Date, \$60.00 per month (plus applicable sales and use tax) per space.

6. Security Deposit.

- 6.1 Concurrently with the execution of the Lease Agreement, Tenant shall provide Landlord with a Security Deposit, in the sum of five thousand three hundred sixty-six dollars and sixty-seven cents **(\$5,366.67)**. Said Security Deposit is to ensure the full and faithful performance by the Tenant of each and every term, covenant and condition of this Lease Agreement. In the event that Tenant defaults in respect of any of the terms, provisions, covenants and conditions of this Lease Agreement, including but not limited to, the payment of any Rent, the Landlord may use, apply or retain the whole or any part of the Security Deposit for the payment of such Rent in default or any other sum which the Landlord may expend or be required to expend by reason of the Tenant's default, including any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency may accrue or after summary proceedings or other re-entry by Landlord.
- 6.2 In the event that the Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease Agreement, the Security Deposit or any balance thereof shall be returned to the Tenant, without interest, upon the expiration of the Lease Agreement and peaceful surrender of the Demised Premises.
- 6.3 Landlord shall not be required to keep the Security Deposit in a segregated account and the Security Deposit may be commingled with other funds of Landlord and in no event shall the Tenant be entitled to any interest on the Security Deposit.
- 6.4 In the event of a bona fide sale of the Property wherein the Demised Premises are located, subject to this Lease Agreement, the Landlord shall have the right to transfer the Security Deposit to the buyer for the benefit of the Tenant and the Landlord shall be considered by the Tenant free from all liability for the return of such Security Deposit, and the Tenant agrees to look to the new landlord solely for the return of the Security Deposit, if such Security Deposit is actually transferred, and it is agreed that this shall apply to every transfer or assignment made of the Security Deposit to any new landlord.
- 6.5 The Security Deposit under this Lease Agreement shall not be assigned or encumbered by the Tenant without the prior written consent of the Landlord. It is expressly understood that the issuance of a warrant and the lawful re-entry to the Demised Premises by the Landlord for any default on the part of the Tenant, prior to the expiration of the term of this Lease Agreement, shall not be deemed such termination of this Lease Agreement as to entitle the Tenant to recovery of the Security Deposit and the Security Deposit shall be retained and remain the possession of the Landlord.

7. Use and Possession of Demised Premises.

- 7.1 The Demised Premises shall be used by the Tenant solely as an **engineering office to serve as the City's program manager and other engineering activities and operations**. Said Premises shall be open for operation a minimum of five (5) days a week, with **normal hours of operation being from Monday through Friday 8:30 A.M. to 5:00 P.M.** Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager, which approval shall not be unreasonably withheld. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.
- 7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the term of this Lease Agreement only for the purposes set forth in Subsection 7.1, and for no other purposes or uses whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purposes not expressly permitted herein, then the Landlord may declare this Lease Agreement in default pursuant to Section 18, or without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

- 8.1 The parties acknowledge that the Demised Premises are being leased in their "as is, where is" condition. Notwithstanding the preceding sentence, should Tenant, at its sole option and discretion, deem to make any improvements to the Demised Premised, Tenant shall construct or cause to be constructed such improvements to the Demised Premises. The plans for such improvements shall be submitted to the Landlord for the Landlord's prior written consent (in its proprietary capacity), which will not be unreasonably withheld or delayed. All permanent (fixed) improvements to the Demised Premises shall remain the property of the Landlord upon termination of the Lease Agreement. Upon the lawful termination of the Lease Agreement, all personal property and trade fixtures may be removed by the Tenant from the Demised Premises without damage to the Demised Premises. The failure of Tenant to complete the improvements and be granted a Certificate of Occupancy within a reasonable time from the date of execution of this Lease Agreement shall be deemed a default by Tenant. Tenant will permit no liens to attach to the Demised Premises arising from, connected with or related to the construction of the improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to Landlord. Any and all final regulatory approvals, permits and or licenses required for the installation of improvements shall be the sole responsibility of Tenant.



8.2 The above requirements for submission of plans and the use of specific contractors shall not apply to maintenance or repairs which do not exceed \$1,000.00, provided that the work is not structural, and provided that it is permitted by applicable law.

8.3 Intentionally Omitted.

9. Landlord's Right of Entry.

9.1 The Landlord, or its authorized agent or agents, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same, preventing waste, making such repairs as the Landlord may consider necessary and for the purpose of preventing fire, theft or vandalism. However, Landlord agrees that whenever possible, Landlord shall provide reasonable notice, in writing, to Tenant, unless the need to enter the Demised Premises is an emergency, as deemed by Landlord at its sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the Landlord to do any work that under any provisions of this Lease Agreement the Tenant may be required to perform, and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the Landlord, or its agents, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the Landlord or such agents liable therefore.

9.3 Tenant shall furnish Landlord duplicate keys to all locks including exterior and interior doors upon the effective date of this Lease Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of Landlord, not to be unreasonably withheld, and in the event such consent is given Tenant shall furnish Landlord duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 The Tenant shall, at its sole cost and expense, comply with all insurance requirements of the Landlord. It is agreed by the parties that the Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been furnished to and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach and the Miami Beach Redevelopment Agency must be named as additional insured parties on this policy.

- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
    - 10.1.3 All-Risk property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of the Lease Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant.
  - 10.2 Proof of these coverages must be provided by submitting original certificates of insurance. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager, respectively, at 1700 Convention Center Drive, Miami Beach, Florida, 33139. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.
11. Property Taxes and Assessments.  
For the purposes of this Section and other provisions of this Lease Agreement:
- 11.1 The term "Property Taxes" shall mean (i) the real estate taxes, assessments, and special assessments of any kind which may be imposed upon the tax lot on which the building is constructed (the "Land") and (ii) any expenses incurred by Landlord in obtaining a reduction of any such taxes or assessments.
  - 11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1<sup>st</sup> of each year.
  - 11.3 The term "Tenant's Proportionate Share" shall mean the ratio that the square footage of the Demised Premises bears to the square footage of the leasable space in the entire building.
  - 11.4 Tenant shall pay, as Additional Rent pursuant to Section 3.2.2, for such Property Tax Year, an amount ("Property Tax Payment") equal to Tenant's Proportionate Share of the Property Taxes, if any, for such Property Tax Year.
12. Assignment and Subletting.
- 12.1. Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of Landlord, such consent not to be unreasonably withheld. Such written consent is not a matter of right and Landlord is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant

from any of its obligations under this Lease Agreement. A sale or transfer of a majority interest of the stock of Tenant's corporate entity shall be deemed an assignment, and for purposes of this Lease Agreement, the Landlord shall have the right to approve the new majority owner. Said approval shall be provided in writing. A change in majority interest shall not be deemed to occur if ownership interests change among any of the Tenant's current shareholders. However, any such change in majority interest shall be communicated to the Landlord in writing immediately upon said occurrence. Tenant is prohibited from assigning or subletting this Lease Agreement to any person or entity which is not of the same or higher financial responsibility as Tenant, as shall be determined by Landlord, in its sole judgment and discretion.

12.2 Any consent by the Landlord to any act of assignment shall apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Tenant or the legal representatives or assigns of the Tenant, to obtain from the Landlord consent to any other or subsequent assignment, or as modifying or limiting the rights of the Landlord under the foregoing covenants of the Tenant not to assign without such consent.

12.3 Any violation of the provisions of this Lease Agreement, whether by act or omissions, by assignee, sub-tenant, or under-tenant or occupant, shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto, that the Tenant shall assume and be liable to the Landlord for any and all acts and omissions of any and all assignees, sub-tenants, or under-tenants or occupants. If the Lease Agreement be assigned, the Landlord may and is hereby empowered to collect rent from the assignee; if the Demised Premises or any part thereof be underlet or occupied by any person, other than the Tenant, the Landlord, in the event of the Tenant's default, may, and is hereby empowered to, collect rent from the under-tenant or occupants; in either of such events, the Landlord may apply the net amount received by it for rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance of the covenants herein contained on the part of the Tenant.

13. Maintenance and Repair.

13.1 Tenant shall maintain the Demised Premises and the fixtures and appurtenances therein, and at its sole cost and expense, shall make all repairs thereto as and when needed to preserve them in good working order and condition. Landlord shall be responsible for the maintenance of the roof, the exterior of the building, the structural electrical and plumbing (other than plumbing surrounding any sink within the Demised Premises), the common areas and the chilled water supply system. Landlord shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition. Tenant shall also be responsible for all interior walls and

the interior windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken using glass of the same or better quality, at its sole cost and expense.

- 13.2 All damage or injury of any kind to the Demised Premises and to its fixtures, glass, appurtenances, and equipment, if any, or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the wrongful acts or negligence of the Landlord, shall be the obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the satisfaction of Landlord.
- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the Landlord, at the expense of Tenant, and all sums spent and expenses incurred by Landlord shall be collectable as Additional Rent and shall be paid by Tenant within ten (10) days after rendition of a bill or statement thereof.
- 13.5 It shall be Tenant's obligation to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 13.6 Tenant acknowledges that the demised premises are hereby being leased in their present "as is, where is" condition.

14. Governmental Regulations.

The Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's sole cost and expense. The Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of the Tenant to comply with this Section, and shall indemnify and hold harmless the Landlord from all liability arising from each noncompliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the leased premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said premises, or improvements by or at the direction or sufferance of the Tenant, provided however, Tenant shall have the right to contest the validity or amount of

any such lien or claimed lien. In the event of such contest, Tenant shall give the Landlord reasonable security as may be demanded by Landlord to insure payment thereof and prevent sale, foreclosure, or forfeiture of the premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1-1/2) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from Landlord, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper cost and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Enforcement.

Tenant agrees to pay the Base Rent and any Additional Rent herein reserved at the time and in the manner aforesaid, and should said rents herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the Landlord may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately or the Landlord may pursue any other remedies enforced by law.

17. Condemnation.

17.1 If at any time during the term of this Lease Agreement and any renewal term hereunder, all or any part or portion of the building in which the Demised Premises are located, sufficient in size, to cause the Demised Premises to be untenable, is taken, appropriated, or condemned by reason of Eminent Domain proceedings (except if the Eminent Domain proceedings are initiated by the City of Miami Beach), then this Lease Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Lease Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and the Tenant shall pay any and all rents, additional rents, utility charges, or other costs including excess taxes for which it is liable under the terms of this Lease Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the Landlord in any such Eminent Domain proceeding, excepting, however, the Tenant shall have the right to claim and recover from the condemning authority, but not from the Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:

The following shall constitute an Event of Default under this Lease Agreement:

- 18.1.1 The Base Rent, Additional Rent, or any installment thereof is not paid promptly when and where due within fifteen (15) days of due date and if Tenant shall not cure such failure within five (5) days after receipt of written notice from Landlord specifying such default;
- 18.1.2 Any other payment of Rent or other charges provided for under this Lease Agreement is not paid promptly when and where due;
- 18.1.3 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.4 The Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from Landlord specifying any such default; or such longer period of time acceptable to Landlord, at its sole discretion;
- 18.1.5 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time acceptable to Landlord, at its sole discretion;
- 18.1.6 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.7 Tenant shall become insolvent;
- 18.1.8 Tenant shall make an assignment for benefit of creditors;
- 18.1.9 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.10 The leasehold interest is levied on under execution.

19. Landlord's Rights in the Event of Default.

19.1 Rights on Default:

In the event of any default by Tenant as provided herein, Landlord shall have the option to do any of the following in addition to and not in limitation of any other remedy permitted by law or by this Lease Agreement;

- 19.1.1 Terminate this Lease Agreement, in which event Tenant shall immediately surrender the Demised Premises to Landlord, but if Tenant shall fail to do so Landlord may, without further notice, and without prejudice to any other remedy Landlord may have for possession or arrearages in Rent or damages for breach of contract, enter upon Demised Premises and expel or remove Tenant and his effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless Landlord for all loss and damage which Landlord may suffer by reasons of such Lease Agreement termination, whether through inability to re-let the Demised Premises, or through decrease in Rent, or otherwise.
- 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Lease Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of Landlord, as provided in the Notices section of this Lease Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the Rent for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.
- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore, remove Tenant's property there from, and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which Landlord deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay Landlord any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of Landlord; and for the purpose of re-letting, Landlord may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from Rent resulting from re-letting; and (iii) Tenant shall pay Landlord any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of Rent due, holding the Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of Rent accruing under the

provisions of this Lease Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on Landlord's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five days of the due date. In addition, there will be a late charge of \$50.00 for any payments submitted after the grace period.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, Landlord may pay such expense but Landlord shall not be obligated to do so. Tenant upon Landlord's paying such expense shall be obligated to forthwith reimburse Landlord for the amount thereof. All sums of money payable by Tenant to Landlord hereunder shall be deemed as rent for use of the Demised Premises and collectable by Landlord from Tenant as Rent, and shall be due from Tenant to Landlord on the first day of the month following the payment of the expense by Landlord.

19.1.7 The rights of the Landlord under this Lease Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the Landlord to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by Landlord:

The failure of Landlord to perform any of the covenants, conditions and agreements of the Lease Agreement which are to be performed by Landlord and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to Landlord (which notice shall specify the respects in which Tenant contends that Landlord failed to perform any such covenant, conditions and agreements) shall constitute a default by Landlord, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond Landlord's control, and Landlord within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

In the event Landlord fails to cure any such default(s) within the thirty (30) day cure period, or within the extended cure period, as provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for the Tenant, then such failure to perform shall constitute a default by Landlord.



19.3 Tenant's Rights on Default:

If an event of Landlord's default shall occur, pursuant to Subsection 19.2, Tenant's sole remedy shall be to terminate this Lease Agreement by giving written notice of such election to Landlord, whereupon this Lease Agreement shall terminate as of the date of such notice.

19.4 Tenant's Right to Terminate Lease Agreement:

In the event that the agreement between Tenant and Landlord entitled, "Agreement between City of Miami Beach, Florida and Hazen and Sawyer for Program Management Services to Manage Construction Projects within the Public Right of Way, pursuant to Request for Qualifications No. 102-99/00", dated January 31, 2001 (the Program Management Agreement), is terminated pursuant to Sections 9.2 or 9.3, respectively, of said Agreement, then this Lease Agreement shall also terminate, without liability to either party; said termination to be effective as of the date specified in the written notice terminating the Program Management Agreement. Notwithstanding Tenant's right to terminate this Lease Agreement pursuant to this Subsection 19.4, Tenant shall still be responsible for any and all outstanding Rent due and payable up to the date of termination.

20. Indemnity Against Costs and Charges.

20.1 The Tenant shall be liable to the Landlord for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the Landlord, by reason of the Tenant's breach of any of the provisions of this Lease Agreement. Any sums due the Landlord under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent Rent would constitute a lien on said Premises and the Property.

20.2 If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage an attorney to enforce Landlord's rights and Tenant's obligations hereunder, the Tenant will reimburse the Landlord for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 The Tenant shall indemnify and save the Landlord harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or appurtenance on the Property used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of the Tenants, or any

employee, agent, invitee, or guest, assignee or sub-tenant of the Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises or the building in which the Demised Premises is located or any of its facilities by Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant or the Tenant, but not to include trespassers upon the Demised Premises;

21.1.3 Any breach, violation, or non-performance of any undertaking of the Tenant under this Lease Agreement;

21.2 Tenant agrees to pay all damages to the Demised Premises or other facilities used in connection therewith, caused by the Tenant or any employee, guest, or invitee of the Tenant.

22. Signs and Advertising.

Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises without the prior written consent of Landlord. All signage shall comply with signage standards established by Landlord, and comply with all applicable building codes, and any other Municipal, County, State and Federal laws.

23. Effect of Conveyance.

The term "Landlord" as used in the Lease Agreement means only the owner for the time being of the Property containing the Demised Premises, so that in the event of any sale of said Property, or in the event of a lease of said Property, the Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the Landlord hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of the Property, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the Landlord hereunder.

24. Damage to the Demised Premises.

24.1 The Property in which the Demised Premises are located is insured under Landlord's fire insurance policy. If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by Landlord, in whole or in part, and such damage is covered by Landlord's insurance, if any (hereinafter referred to as "such occurrence"), Landlord, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the rent shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by Landlord, only in part, Landlord shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, if the Demised Premises are by reason of such occurrence, rendered more than 50% but

less than 100% untenable, as determined by Landlord, Landlord shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable. If such time exceeds sixty (60) days, the Tenant shall have the option of canceling this Lease Agreement, which option shall be exercised by Tenant in writing within ten (10) days of receipt of notice of same from Landlord.

- 24.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the Landlord shall utilize the insurance proceeds to cause such damage to be repaired and the Base Rent and Additional Rent meanwhile shall be abated in whole; provided, however, that Landlord shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Lease Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Base Rent and Additional Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, the Tenant shall have the right, to be exercised by notice in writing, delivered to Landlord within thirty (30) days from and after said occurrence, to elect to terminate this Lease Agreement, the rent to be adjusted accordingly. Notwithstanding any clause contained in this Section, if Landlord becomes self insured or the damage is not covered by Landlord's insurance, then Landlord shall have no obligation to repair the damage, but Landlord shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate the Lease Agreement, and the Base Rent and Additional Rent shall be adjusted accordingly.

25. Quiet Enjoyment.

The Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Lease Agreement.

26. Waiver.

- 26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of Landlord to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Lease Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

- 26.2 A waiver of any term expressed herein shall not be implied by any neglect of Landlord to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

26.3 The receipt of any sum paid by Tenant to Landlord after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by Landlord.

27. Notices.

The addresses for all notices required under this Lease Agreement shall be as follows, or at such other address as either party shall in writing, notify the other:

LANDLORD: City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

With copy to: City Attorney  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

And copy to: Asset Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

TENANT: Patrick A. Davis, P.E.  
Vice President  
Hazen and Sawyer, P.C.  
4000 Hollywood Boulevard  
Suite 750 North  
Hollywood, Florida 33021

All notices shall be hand delivered and a receipt requested, or by certified mail with return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.

This Lease Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease Agreement.

29. Provisions Severable.

If any term or provision of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this

Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

30. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Lease Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Lease Agreement to which they relate.

31. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders

32. Governing Law.

This Lease Agreement shall be governed by and construed in accordance with the law of the State of Florida.

33. Limitation of Liability.

The Landlord desires to enter into this Agreement only if in so doing the Landlord can place a limit on Landlord's liability for any cause of action for money damages due to an alleged breach by the Landlord of this Agreement, so that its liability for any such breach never exceeds the sum of One Hundred Thousand Dollars and 00/100 (\$100,000.00). Tenant hereby expresses its willingness to enter into this Agreement with the Tenant's recovery from the Landlord for any damage action for breach of contract to be limited to a maximum amount of One Hundred Thousand (\$100,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the Landlord shall not be liable to Tenant for damage in an amount in excess of One Hundred Thousand (\$100,000.00) Dollars for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the Landlord by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon Landlord's liability as set forth in Florida Statutes, Section 768.28.

34. Surrender of the Demised Premises.

The Tenant shall, on or before the last day of the term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the Landlord the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Article. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Lease Agreement and is not so removed may, at the option of the

Landlord, be deemed abandoned by the Tenant, and either may be retained by the Landlord as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the Landlord may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the term as provided in this Section, the Tenant shall make good the Landlord all damages which the Landlord shall suffer by reason thereof, and shall indemnify and hold harmless the Landlord against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of the Tenant to surrender the Demised Premises as and when herein required.

35. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

36. Venue.

This Lease Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE LANDLORD AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE AGREEMENT.**

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed by the respective duly authorized officers, and the respective corporate seals to be affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Attest:

LANDLORD:  
**CITY OF MIAMI BEACH**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

Attest:

TENANT:  
**HAZEN AND SAWYER, PC.**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Patrick A. Davis  
Vice President

CORPORATE SEAL  
(affix here)

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

F:\DDHP\ASSET\777-17th Street\HazenSawyerLease2.AGR.DOC

  
City Attorney  
4-5-04  
Date

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A SETTLEMENT OF THE LAWSUIT STYLED, GLORIA ROSENTHAL, TRUSTEE OF THE GLORIA ROSENTHAL TRUST u/a/d 5-19-88, n/k/a GLORIA ROSENTHAL TRUST u/a/d 5-14-99 V. CITY OF MIAMI BEACH CASE NO. 04-10744 CA 31; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AND ALL NECESSARY SETTLEMENT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY (BUYER) AND THE GLORIA ROSENTHAL TRUST (SELLER) FOR THE PROPERTY LOCATED AT 1833 BAY ROAD, MIAMI BEACH, FLORIDA; FURTHER MAKING THE SETTLEMENT SUBJECT TO AND CONDITIONED UPON CLOSING OF THE SUBJECT PROPERTY**

**WHEREAS**, on May 12, 2004, Plaintiff, Gloria Miller Rosenthal, filed a Complaint for Declaratory Judgment, styled Gloria Rosenthal, Trustee of the Gloria Rosenthal Trust u/a/d 5-19-88, n/k/a Gloria Rosenthal Trust u/a/d 5-14-99 v. City of Miami Beach Case No. 04-10744 CA 31, seeking a court determination on whether or not the City properly exercised its option to purchase the property located at 1833 Bay Road, Miami Beach, Florida (the Property), and occupied by the City, as Tenant, pursuant to a Lease Agreement with Gloria Miller Rosenthal, as Landlord, dated January 31, 2001, and as amended on February 4, 2004 (First Amendment to the Lease Agreement); and

**WHEREAS**, the lawsuit further sought a court determination whether another purchase and sale contract for the Property, entered into on March 22, 2004, between the Plaintiff and Tamron Properties, LLC.) met the criteria, as established in the First Amendment to the Lease Agreement, (i) that it be a "binding" contract, and ii) and that the potential purchaser (Tamron) be a "pre-approved" and "qualified" buyer; in the event that said contract did comply with the aforestated provisions, the effect would be to render the City's option to purchase the Property null and void; and

**WHEREAS**, Plaintiff also sought attorney's fees and costs; and

**WHEREAS**, subsequent to the filing of the above-styled lawsuit, the parties thereto entered into settlement negotiations; Plaintiff presented a settlement offer to the City, wherein the City would be entitled to purchase the Property for \$1,080,000; additionally, Plaintiff and the City would agree to split the brokerage commission, in the amount of \$60,000, (\$30,000 payable by the City and \$30,000 payable by the Plaintiff), and all parties would pay their respective attorney's fees and costs; and

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**WHEREAS,** the City has determined that accepting Plaintiff's settlement offer is in the best interest of the City; and

**WHEREAS,** the City hereby further makes its acceptance of the aforestated settlement subject to and conditioned upon (i) execution by the parties hereto of a Purchase and Sale Agreement, setting forth the terms and conditions governing the sale of the Property to the City, and (ii) closing of the subject Property.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA,** that the Mayor and City Commission hereby approve a settlement of the lawsuit styled, Gloria Rosenthal, Trustee of the Gloria Rosenthal Trust u/a/d 5-19-88, n/k/a Gloria Rosenthal Trust u/a/d 5-14-99 v. City of Miami Beach Case No. 04-10744 CA 31; authorize the Mayor and City Clerk to execute any and all necessary settlement documents, including but not limited to the execution of a Purchase and Sale Agreement between the City (Buyer) and the Gloria Rosenthal Trust (Seller) for the property located at 1833 Bay Road, Miami Beach, Florida; and further make the aforestated settlement subject to and conditioned upon closing of the subject Property.

**PASSED and ADOPTED** this 10th day of November, 2004.

**ATTEST:**

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**CITY CLERK**

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**MAYOR**

JMG\CMC\JD\rir

F:\DDHP\ISALL\ASSET\1833BAY\Approval To Purchase.RES.DOC

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
City Attorney  
11-4-04  
Date



**\*\* Official \*\***

**CERTIFICATE OF COUNTY CANVASSING BOARD**

**STATE OF FLORIDA**

**Miami-Dade County**

We, the undersigned, County Court Judge SHELLEY J. KRAVITZ, **Chairperson**, Supervisor of Elections CONSTANCE A. KAPLAN, **Member**, and Board of County Commissioners Vice Chair KATY SORENSON, **Member**, constituting the Board of County Canvassers in and for said County, do hereby certify that we met on the 2nd day of November, A.D., 2004, and proceeded publicly to canvass the votes given for the straw ballot questions herein specified at the **City of Miami Beach Straw Ballot Election** held on the 2nd day of November, A.D., 2004 as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

**STRAW BALLOT QUESTION NO. 1**

**Advisory, Non-Binding Straw Ballot Question – Bay Link Streetcar Rail System**

Should Miami Beach approve the construction of an electrically operated streetcar transportation system commonly known as "Bay Link", running on tracks and connecting a loop around downtown Miami to a loop around South Beach via a dedicated lane added to the MacArthur Causeway, provided that no concurrency or development credits are granted by Miami Beach for the transportation system and provided further that all construction costs are paid entirely from federal, state, and county funds?

YES 14,698 votes

NO 12,507 votes

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**\*\* Official \*\***

**STRAW BALLOT QUESTION NO. 2**

**Advisory, Non-Binding Straw Ballot Question – 63<sup>rd</sup> Street Flyover**

Should the flyover at the intersection of 63<sup>rd</sup> Street and Indian Creek be preserved (not demolished)?

YES 18,469 votes

NO 7,320 votes

**STRAW BALLOT QUESTION NO. 3**

**Advisory, Non-Binding Straw Ballot Question – Annual Limit On Large Projects**

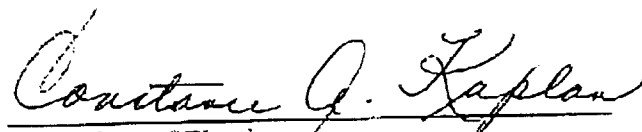
Should the Miami Beach Comprehensive Plan be amended to establish annual limits where appropriate on the construction of new buildings that are larger than 50,000 square feet?

YES 18,820 votes

NO 7,296 votes

**MIAMI-DADE COUNTY CANVASSING BOARD:**

\_\_\_\_\_  
County Court Judge  
SHELLEY J. KRAVITZ, Chairperson

  
\_\_\_\_\_  
Supervisor of Elections  
CONSTANCE A. KAPLAN, Member

\_\_\_\_\_  
Board of County Commissioners Vice Chair  
KATY SORENSON, Member

Date certified: NOV. 9, 2004